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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Turkey, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Note verbale dated 27 December 2001 from the Permanent Mission of Turkey to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Turkey to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism, and with reference to the latter's note SCA/20/01(1) dated 4 October 2001, has the honour to submit herewith the report on the measures taken by the Republic of Turkey against terrorism with regard to Security Council resolution 1373 (2001).

Enclosure

MEASURES TAKEN BY THE REPUBLIC OF TURKEY AGAINST TERRORISM

Report to the Security Council Committee established pursuant to resolution 1373 (2001)

(December 2001)

Introduction

The terrorist attacks, which took place in New York. Washington D.C. and Pennsylvania on 11 September 2001, have been a major shock for the international community. While causing unprecedented condemnation and unwavering determination of the international community to bring their perpetrators to justice, these heinous attacks showed once again the dimensions of terrorism and the need for international solidarity and common effort to combat it.

As a country, which has suffered for long from terrorism and still a major target, Turkey has condemned in the strongest terms the culprits and instigators of those attacks and called for intensified international cooperation for the prevention of this scourge. Turkey has therefore welcomed the adoption of Security Council Resolution 1373, which constitutes a solid and comprehensive instrument for combating terrorism on a universal scale. The resolution provides a clear road map for the steps that need to be taken in this regard. We hope that all member States will fully comply with this groundbreaking resolution. Turkey is for its part determined to continue to actively contribute to the enhancement of international cooperation in fighting terrorism.

It should be noted that, in the aftermath of the September 11 attacks, Turkey expressed its unequivocal solidarity with the United States of America and responded favorably to its call to join in an international coalition aiming at bringing to justice the perpetrators and organizers of those attacks. In this context, Turkey opened its airspace to US military transport aircraft participating in operation "Enduring Freedom" and issued a blanket clearance for landing to and take off from a number of Turkish airfields.

Having had to cope with terrorism for more than two decades, Turkey is well equipped with internal legal instruments required for the struggle against that evil. It is also party to a number of bilateral and multilateral agreements on cooperation in the prevention of terrorism, organized crime and drugs trafficking.

International efforts to combat terrorism cannot be fully effective in the absence of a global instrument completing the existing UN Conventions in this field. The draft Comprehensive Convention on International Terrorism, under discussion at the Working Group established by the Sixth Committee, aims at addressing this shortcoming. Turkey calls upon all member States to make additional efforts towards finalizing that Convention.

Note: the numbers of the following paragraphs and sub-paragraphs correspond to those of the relevant paragraphs and sub-paragraphs of UNSC Resolution 1373

OPERATIVE PARAGRAPH 1

Legal provisions for the prevention of the financing of terrorist activity

Turkey has various legislation that contains provisions, which may apply to prevent and suppress the financing of terrorist acts. The **Law on Fight Against Terrorism** No: 3713, the **Penal Code**, the **Law on the**

Prevention of Money Laundering and the **Law on the Prevention of Benefit-Oriented Criminal Organizations** No: 4422 in particular, are basic instruments prohibiting the financing of terrorist acts.

- Article 7, paragraph 4 of the **Law on Fight Against Terrorism**: *"The activities of associations, foundations, unions (...) which are found to have lent support to terror movements will be prohibited and they will be dissolved by the decision of the concerned court. The assets of such institutions will be confiscated".*

- Article 4 of the **Law on Fight Against Terrorism** stipulates that the crimes referred to in Article 169 (among others) of the Penal Code are terrorist crimes. According to Article 169 of the Penal Code, assistance in any form to a criminal organization is a punishable crime.

- Article 7 of the **Law on the Prevention of Money Laundering** No: 4208: *"Whoever commits the offense of money laundering shall be sentenced to imprisonment for two to five years and to a heavy fine equal to the amount of the money laundered and all the property and assets in the scope of dirty money, including the returns thereof, and in case the property and assets cannot be seized, the corresponding value shall be subject to confiscation.*

If dirty money is derived from offences of ***terrorism*** *or from smuggling of substances or materials whose export or import is prohibited or if the offence is committed in order toobtain financial sources for the commission of* ***terrorist offences****, the term of imprisonment referred to in the paragraph above shall not be less than four years".*

- Article 9 of the **Law on the Prevention of Money Laundering** No: 4208 reads: *"When there is serious circumstantial evidence of money laundering, the authority entitled to order the freezing of claims and rights in banks, non-banking financial institutions, as well as in real and other legal persons, including the values in deposit boxes; the total or partial annulment of the right of disposition; the seizure of property, negotiable instruments, cash and other valuables; the holding of the assets in custody and the taking of other precautionary measures on claims and rights, is the Criminal Court of Peace Magistrate during the preliminary investigation and the Court during the trial. Requests for precautionary measures are concluded immediately as a result of evaluation of documents and at latest within 24 hours. Public prosecutors may also decide to freeze claims and rights in cases where it is necessary to avoid delay. The Office of the Public Prosecutor notifies the Criminal Court of Peace Magistrate about the decision at latest within 24 hours. The Peace Court Magistrate decides at most within 24 hours whether to approve the decision or not; in case of non-approval, the decision of the Public Prosecutor becomes void."*

- Article 6 of the **Law on the Prevention of Benefit-Oriented Criminal Organizations**, No: 4422, *"Without prejudice to the provisions of the Law 4208 dated 13.11.1996, a decision may be taken during investigations to confiscate all movable or immovable assets of persons who are strongly suspected of having committed crimes mentioned under Article I of the present law and to prohibit totally or partially their exercise over rights and claims, including rented vaults, in banks or non-banking institutions and other real or corporate bodies; to invest such assets a depository location; and to take additional measures for the administration of property, commercial papers, cash or other values.*

Upon demand of the Public Prosecutor, the Financial Crimes Investigation Board of the Ministry of Finance carries out the investigation, examination, identification and evaluation of the assets mentioned in the paragraph above, be they within the country or abroad.

When it becomes apparent that the assets mentioned in Paragraph I are legitimate, no confiscation order shall be given and prior confiscation orders shall be annulled.

Should the accused be found guilty, the assets in question shall become State property.

- According to Article 16 of the above-mentioned law this measure is also applied for offences falling within the scope of the **Law on Fight Against Terrorism**.

Regulatory provisions barring the financing of terrorist activity:

- Regulations which require minimum qualifications and the endorsement of the Capital Market Board (Board, CMB) for founders, shareholders and holders of managerial posts of capital market institutions.

- The oversight and control of the Board, in transfers of shares of capital market institutions over a certain percentage.

- Customer name based custody system used in Istanbul Stock Exchange (ISE) Settlement and Custody Bank Inc- This method enables to determine the identity of the securities investors.

- "Know your customer rule" applied for the intermediary institutions. This method provides the determination of the identities of securities investors who effect trades.

- Memoranda of understanding concluded between the Board and equivalent foreign authorities, providing for international cooperation in cases of securities fraud

- Regulations on suspicious transactions that apply also to transactions carried out by terrorists. (Type 2 transactions have to be reported to the Financial Crimes Investigation Board of the Ministry for Finance (FCIB) Type 2 transactions are transfers of large amounts of money from or to countries in which there are illegal activities regarding narcotic substances, smuggling or in which there are terrorist organizations and transfers of large amounts of money from or to offshore centers).

Action Taken in the Aftermath of the September 11 Attacks against the Financing of Terrorism

Pursuant to the request by the Government of the United States of America concerning the blocking of the assets of persons, companies and organizations connected with Osama ben-Laden and the Al-Qaida terror organization, the Government of Turkey has launched an official investigation which resulted in the identification of one individual of foreign nationality having assets in Turkey. The assets of this individual have been blocked through an administrative decision taken by the Investigation Board of the Ministry of Finance.

OPERATIVE PARAGRAPH 2

a) There are two principal laws that regulate terrorist offences and their punishments, namely the **Turkish Penal Code** (TPC) and the **Law on Fight Against Terrorism** (LFAT).

- According to Article 7 (paras 2 and 5) of **LFAT**, assistance to members of terrorist organizations and propaganda of such organizations are **terrorist crimes** punishable under that law. Propaganda with the purpose of recruitment to **terrorist groups** and the expression of sympathy for such groups are offenses falling within the scope of this article. In case such propaganda is made in periodical publications, their owners and responsible editor- in- chiefs are also punished.

- Article 314 of **TPC** provides for prison sentences up to one year for supplying food and shelter, weapons or ammunition to organizations established with the purpose of committing crimes.

- Article 169 of the **TPC**: *"Whoever, in circumstances other than prescribed in Articles 64 and 65, knowingly gives shelter, assistance, provisions, arms or ammunition tosuch a society or a band, or facilitates their actions, shall be punished by heavy imprisonment for three to five years.*

- According to Article 2 (para 2) of **LFAT**, those who commit crimes for and on behalf of **a terrorist organization** are also considered **terrorists** even if they do not take part therein and are punished as members of that organization.

- As already stated, According to Article 7 (para 4) of LFAT, *"The activities of associations, foundations, unions (...) which are found to have lent support to* ***terror movements*** *will be prohibited and they will be dissolved by the decision of the concerned court. The assets of such institutions will be confiscated".*

b) For an effective, reliable and speedy exchange of information on **terrorist activity, liaison officers** are being reciprocally appointed with a number of counties (USA, Germany, Belgium, Denmark, France, Holland, UK, Spain, Italy, and Saudi Arabia). There are also Turkish contact persons at expert level in Germany, Austria, Holland, Italy and Romania. Furthermore, within a well established cooperation and information-exchange mechanism, all information regarding persons for whom there are grounds to believe that they have been or will be involved in **terrorist activities** is immediately conveyed by the Turkish Ministry of Interior to its counterparts.

(c, d, e) Financing, planning, preparing, perpetrating and supporting **terrorist acts** are established as serious criminal offenses for which numerous articles of the **Turkish Penal Code** and **the Law on Fight Against Terrorism** provide for heavy punishments.

- Legal persons involved in **terrorism** are also subject to prosecution. The activities of associations, foundations, trade unions or other similar institutions who support **terrorist groups** are being prohibited and their assets confiscated.

- According to Article 168 of the **Turkish Penal Code**; *"Whoever establishes armed societies and bands or undertakes the duty of chieftain or command or any particular duty in such societies or bands, with the purpose of committing the crimes defined in Articles 125, 131, 146, 147, 149 and 156, shall be punished by heavy imprisonment for not less then fifteenyears. Other members of such society or band shall be punished by heavy imprisonment for ten to fifteen years.*

- According to the **LFAT** those establishing, organizing and directing the organizations covered by Section I of that law, are sentenced to heavy imprisonment from five to ten years and to heavy fine. Those joining such organizations are sentenced to heavy imprisonment from three to five years and to heavy fine.

- According to **LFAT** Article 7, those who help the adherents of the organizations referred to above or are involved in propaganda activities for the said organizations are sentenced to imprisonment from one to five years and to heavy fine, even if their acts constitute different crimes under other laws.

- According to **LFAT** Article 5, sentences pronounced for those who commit the crimes mentioned in various articles of the **Turkish Penal Code** are aggravated by one-half for both the freedom-restricting and monetary sanctions, when those crimes are committed for terrorist purposes.

- **Terrorist offences** are tried in specialized **State Security Courts**.

- Sentences for **terrorist offences** cannot be commuted nor deferred.

(f) Through the liaison officers appointed by or to Turkey and through bilateral Security Cooperation Agreements with some 40 countries, Turkey enjoys an effective information flow and mutual assistance in criminal matters. Joint Committee Meetings based on those agreements are being held periodically to discuss and exchange information related to security and criminal matters including **terrorist** ones.

(g) Passport applicants in Turkey are subject to thorough investigation. Entries and exits of persons are recorded in the computer network and checked with criminal information. A draft Passport Law is in process, which foresees heavier sentences for illegal border crossings and a new type of Turkish passports more difficult to forge.

OPERATIVE PARAGRAPH 3

a) The existing exchange of operational intelligence with regard to the activities of **terrorist groups** within the cooperation between the relevant security authorities of Turkey and their foreign counterparts greatly intensified after the terrorist attacks of September11, 2001.

b) Relevant bodies exchange intelligence and cooperate on administrative and judicial matters with their foreign counterparts with a view to prevent **terrorist activities.**

With a circular dated 25.10.2001, the Ministry of Justice has forwarded **UNSC Resolution 1373 (2001)** to all public prosecutors, with the instruction that the resolution be meticulously implemented and be taken into consideration with respect to requests for judicial assistance received in accordance with agreements to which Turkey is party.

c) In addition to its multilateral commitments, Turkey is also party to 49 bilateral agreements with some 40 countries on **cooperation in combating terrorism**, organized crime and drugs trafficking.

d) Turkey has ratified 10 out of the 12 **UN conventions relating to terrorism.** The remaining two conventions, namely the **"International Convention for the Suppression of Terrorist Bombings"** and the **"International Convention for the Suppression of the Financing of Terrorism"** are expected to be ratified by the Turkish Grand National Assembly soon.

e) As a country which has been a victim of terrorism for almost three decades, Turkey condemned the perpetrators and sponsors of the murderous attacks of 11 September officially and called upon the international community to make every effort to enhance and contribute to international cooperation. Turkey strongly condemns all acts, methods and practices of terrorism regardless of their motivation, in all their forms and manifestations, wherever and by whomever they are committed. Turkey endorses and fully abides by the provisions of all relevant UNSC Resolutions including 1269 (1999) and 1368 (2001).

Immediately after President George W. Bush's Executive Order was released on September 23, 2001, Turkey formed a committee to investigate whether the persons and companies in that list, suspected to have relations with Osama Bin Laden and Al Qaida are present and active in Turkey. After thorough investigation by relevant authorities it appeared that one person on the list had lucrative activities in Turkey, following which all his assets were frozen.

It should be noted that, Turkey has so far played an active role in drafting and adopting various international documents, thus contributing to codification efforts in this field. The 1977 **European Convention on the Suppression of Terrorism** is an example to thee instruments.

f) In accordance with the reservation it has put to the Geneva Convention on the Legal Status of Refugees Turkey accepts refugees only from European countries. Non-european asylum seekers are temporarily hosted in Turkey until a safe third country is prepared to receive them. In both cases applications for asylum seekers are carefully examined so as to ensure that the applicants are not involved in any **terrorist activity**.

g) Turkey does not extradite persons whose offenses are of a political nature in accordance with article 3 of the "European Convention on the Extradition of Convicts". However, this principle does not apply in case of **terrorist offenses**, in conformity with Turkey's commitments under UN conventions on terrorism.

Turkey's efforts in international fora in view of securing enhanced cooperation in the fight against terrorism

Turkey fully supports all efforts by the international community aimed at combating terrorism. In this context, it has substantially contributed to the drafting and adoption of resolutions and agreements in various international organizations.

At **NATO**, Turkey has consistently maintained the view that terrorism should be accepted as a new threat to the Alliance within the new Strategic Concept. After the horrendous attacks against the United States of America on 11 September 2001, a NATO ally, Turkey strongly supported the invoking of Article 5 of the North Atlantic Treaty. As before, Turkey will be actively supporting all efforts within NATO with regard to combating terrorism.

Furthermore, Turkey contributed intensely to all efforts within the **Organization for Security and Cooperation in Europe** for fighting against terrorism. In this context, Turkey has actively participated in and contributed to the recent international conference entitled "Enhancing Security and Stability in Central Asia: Strengthening Comprehensive Efforts to Counter Terrorism" held on 13-14 December 2001 in Bishkek, Krgyzystan.

Turkey also supports the regional initiatives on combating transnational crime and terrorism within the **Southeastern European Cooperation Initiative** (SECI) and the **Black Sea Economic Cooperation** (BSEC).

Turkey has ratified the Agreement on Cooperation to Prevent and Combat Trans-Border Crime (SECI Agreement) and appointed two liaison officers to the SECI Center on Combating Trans-Border Crime in Bucharest that was established in accordance with the SECI Agreement.

Turkey also ratified the Agreement Among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms (BSEC Agreement). Turkey is actively participating in the meetings ofthe BSEC Working Group on Combating Crime and has contributed to the elaboration and finalization of the Draft Additional Protocol to the BSEC Agreement that concerns the establishment of a BSEC Network of Liaison Officers.

Furthermore, as a member of the **Organization of the Islamic Conference**, Turkey has actively participated in the drafting and conclusion of the Convention of the Organization of the Islamic Conference on combating international terrorism.

The Council of Europe Context

Turkey has undertaken a number of commitments as a member of the Council of Europe, which specialises in human rights protection and legal cooperation on a pan-European scale, in the field of combating terrorism and related areas.

First of all, Turkey has signed and ratified the **1977 European Convention on the Suppression of Terrorism** (see Para. "C" under the heading "Operative Paragraph 3".)

The fact that the Convention is far from being satisfactory with regard to the current needs in the field has become evident in time. The very concept of "political crimes" contained in the text and the possibility of making reservations in matters of extradition has seriously flawed the mechanism stipulated by the Convention. Turkey has long been stressing the need to up-date and if necessary revise the instrument. Turkey is of the opinion that should the work to up-date and/or revise the Convention fail, a new legal instrument, which will be compatible with today's needs must be drafted.

Turkey is also party to the following Council of Europe Conventions covering directly or indirectly the fields of terror and organised crime:

- European Convention on Extradition (ETS.24)
- Second Additional Protocol to the European Convention on Extradition (ETS.98)
- European Convention on Mutual Assistance in Criminal Matters (ETS.30)
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS.99)
- European Convention on the Transfer of Proceedings in Criminal Matters (ETS. 73)
- Convention on the Transfer of Sentenced Persons (ETS.112)

Turkey has signed and initiated formalities on ratification for the following Council of Europe instruments:

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS.141)
- Criminal Law Convention on Corruption (ETS.173)
- European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS.51)
- European Convention on the Control of the Acquisition and Possession of Firearms by Individuals (ETS.101)
- European Convention on the Compensation of Victims of Violent Crimes (ETS.116)
- Civil Law Convention on Corruption (ETS.174)

Finally, following instruments are under study with a view to sign and ratify:

- Additional Protocol to the European Convention on Extradition (ETS.86)
- Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS.167)
- Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (ETS.156)

Turkey has always taken part actively in all efforts to increase the level of cooperation in the field at all Council of Europe fora, including the Parliamentary Assembly.

Just after the September 11 events, the Committee of Ministers of the Council of Europe has adopted, on 12 September, a declaration condemning the attacks with the strongest terms. Turkey has energetically supported the initiative.

Turkey also supported the 21 September decision of the Committee of Ministers to establish special institutions to work on the legal aspects of European cooperation in the fight against terrorism. With this understanding in mind, it has participated first meetings of the newly established "Committee of Experts on Combating Terrorism and Human Rights" and "Multi Disciplinary Group on Terrorism".

Turkey extended its unreserved support to the initiatives of the Secretary General of the Council of Europe in the field of combating terrorism.

Furthermore, Turkish members of the Parliamentary Assembly of the Council of Europe have worked vigorously for the adoption of the Resolution (1258(2001)) and Recommendation (1534(2001)) "Democracies facing terrorism". They have exerted specific efforts to have a reference to the principle of "either try or extradite" (out dedere out judicare) in terror crimes in the aforementioned texts.

Finally, Turkey has supported the Declaration adopted by the 109th Ministerial Session of the Committee of Ministers, which defines terrorism as a crime against humanity.

CONCLUSION

Whatever its strength, no country can defeat terrorism without close international cooperation. Recent events have demonstrated it. Hence, the international community must exert every effort to contribute to the fight against this scourge. UNSC Resolution 1373 sets valuable guidelines for Member States to adopt a common approach in identifying, defining, condemning, isolating and bringing before justice the perpetrators of terrorists acts.

Turkey also welcomes initiatives within regional organizations in view of combating terrorism. However, as terrorism has no particular geography, these initiatives must complement universal cooperation in this regard, rather than having an exclusionist nature. The fight against terrorism must be a common one and Turkey is firmly committed to work hand in hand with every State or international organization for its success.

Selective attitudes based on political motivations and assessments are the main obstacles before an efficient international cooperation against terrorism. Illusionary distinctions, tolerance for or condoning of certain terrorist movements are approaches which cannot but impair labors aiming at eradicating this evil from the surface of our planet.

Many of Turkey's extradition demands have been refused in the past on various grounds and perpetrators of most wicked crimes have found safe havens in third countries. We have renewed our extradition requests hoping that they would be reevaluated in the wake of the September 11 events. In the same vein, we recently provided the names of terrorist organizations of separatist, extreme leftist and fundamentalist nature that pose a major threat to Turkey, to be included in a list that the EU will prepare, as a contribution to the efforts in progress in the Union. Turkey is of the opinion that, the response of its partners in the EU will constitute a test of their solidarity in our struggle against terrorism.